

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO *et al.*,

Debtors.¹

PROMESA Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER
AUTHORITY,

Debtor.

PROMESA Title III

No. 17 BK 4780-LTS

**Court Filing Relates Only to PREPA
and Shall Only be Filed in Case No.
17-BK-4780 (LTS) and Main Case
17-BK-3283 (LTS)**

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's Federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 04780-LTS) (Last Four Digits of Federal Tax ID: 3747).

**PRELIMINARY STATEMENT AND RESERVATION OF RIGHTS
OF U.S. BANK NATIONAL ASSOCIATION AS PREPA BOND
TRUSTEE WITH RESPECT TO 9019 MOTION OF
GOVERNMENT PARTIES RELATING TO PREPA
RESTRUCTURING SUPPORT AGREEMENT**

This Preliminary Statement and Reservation of Rights (the “**Preliminary Statement and Reservation**”) is filed by U.S. Bank National Association in its capacity as PREPA Bond Trustee (the “**PREPA Bond Trustee**”). The PREPA Bond Trustee currently anticipates making a filing in support of the *Joint Motion of PREPA and AAFAF Pursuant to Bankruptcy Code Sections 362, 502, 922 and 928, and Bankruptcy Rules 3012(A)(1) and 9019 for Order Approving Settlements Embodied in the Restructuring Support Agreement* (“**9019 Motion**”) [Dkt. No. 1235] within the time period allowed for joinders and submissions by supporting parties under the Court’s scheduling order. The PREPA Bond Trustee files this Preliminary Statement and Reservation within the period allowed for objections out of an abundance of caution to preserve the right to be heard with respect to its individual rights and the rights of Bondholders who are not parties to the Definitive Restructuring Support Agreement dated as of May 3, 2019 (“**PREPA RSA**”), to the limited extent described below.

1. U.S. Bank National Association serves as the PREPA Bond Trustee under that certain Trust Agreement dated as of January 1, 1974 (as amended, supplemented or otherwise modified from time to time, the “**Trust Agreement**”), by and between it as trustee and the Puerto Rico Electric Power Authority (“**PREPA**”) as issuer, pursuant to which Puerto Rico Electric Power Authority Power Revenue and Power Revenue Refunding Bonds have been issued and are outstanding (collectively, the “**Bonds**,” and holders thereof, the “**Bondholders**”) in the aggregate principal amount of approximately \$8.26 billion. The PREPA Bond Trustee’s rights and duties are set forth in the Trust Agreement.

2. The indebtedness evidenced by the Bonds is secured by, among other things, a pledge of PREPA's past, present, and future revenues as set forth in the Trust Agreement. This pledge constitutes a continuing pledge of PREPA's post-petition special revenues within the meaning of 11 U.S.C. § 928 made applicable to the above-captioned Title III proceeding (the "**Title III Case**") by Section 301 of the Puerto Rico Oversight, Management and Economic Stability Act ("**PROMESA**"). In accordance with the Trust Agreement, the PREPA Bond Trustee has filed a proof of claim in the Title III Case on behalf of all Bondholders asserting that the indebtedness evidenced by the Bonds are fully secured. *See* Claim No. 14133.²

3. Events of Default currently exist under the Trust Agreement by reason of (a) the commencement of the Title III Case; and (b) PREPA's continuing failure to comply with the Trust Agreement during the post-petition period including, without limitation, its failure to pay the Bonds in accordance with their terms. PREPA has also failed to comply with the Trust Agreement's requirement to pay the fees and expenses of the PREPA Bond Trustee.³

4. Under the Trust Agreement, the remedial powers and duties of the PREPA Bond Trustee following an Event of Default, including the right to seek relief from the automatic stay in this Title III Case to pursue remedies, are limited by, among other things, the direct rights and powers of Bondholders holding the requisite percentage of the Bonds (or monoline insurers holding such rights for insured Bonds) who may act independently of the PREPA Bond Trustee

² The Oversight Board and AAFAF have filed a lien challenge adversary proceeding against the PREPA Bond Trustee, contesting the scope and value of its security interests on behalf of Bondholders. *See The Financial Oversight and Management Board for Puerto Rico as Representative of Puerto Rico Electric Power Authority, and the Puerto Rico Fiscal Agency and Financial Advisory Authority v. U.S. Bank National Association as Trustee*, 19-00391-LTS. The foregoing adversary proceeding is currently stayed by agreement of the parties pending the settlements included in the PREPA RSA.

³ The PREPA Bond Trustee has applied certain special revenues held by it pursuant to the Trust Agreement to the payment of its fees and expenses in accordance with the Trust Agreement.

or may direct the actions of the PREPA Bond Trustee to the extent provided in the Trust Agreement. The Ad Hoc Group of PREPA Bondholders (the “**Ad Hoc Group**”), Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (together, “**Assured**”), National Public Finance Guarantee Corp. (“**National**”) and Syncora Guarantee Inc. (“**Syncora**”) (the Ad Hoc Group, Assured, National and Syncora are collectively referred to as the “**Majority Bondholder Group**”) have been directly active, both individually and collectively, in this Title III Case.

5. On May 3, 2019, PREPA, the Financial Oversight and Management Board for Puerto Rico (the “**Oversight Board**”), the Puerto Rico Fiscal Agency and Financial Advisory Authority (“**AAFAF**”), the Ad Hoc Group, and Assured executed the PREPA RSA. The PREPA RSA is a complex set of compromises that paves the way for this Title III Case to move forward with a consensual plan of debt adjustment to be proposed by the Oversight Board on behalf of PREPA (with the support of AAFAF) and supported by the votes of the requisite Bondholders and insurers. It also settles, as amongst the parties, litigation that might otherwise be required with respect to the Bond claims and available rights remedies under applicable law including PROMESA. The PREPA Bond Trustee does not hold PROMESA Title III plan voting rights on behalf of Bondholders and is not a party to the PREPA RSA.

6. On May 10, 2019, AAFAF and the Oversight Board filed the 9019 Motion. On May 17, 2019, the PREPA Bond Trustee received a direction letter (the “**Direction Letter**”) from certain members of the Ad Hoc Group and Assured in accordance with Section 2(a) of the PREPA RSA directing the PREPA Bond Trustee to join in the 9019 Motion. The Direction Letter was not accompanied by an offer of indemnity to the PREPA Bond Trustee as contemplated by Section 902 of the Trust Agreement. In lieu of providing an offer of indemnity, there is a request in the 9019 Motion for a provision in the proposed order exculpating the

PREPA Bond Trustee for its support of the 9019 Motion and certain other acts and omissions (the “**Trustee Exculpation**”).

7. Under the terms of the PREPA RSA, any Bondholder who elects to sign a joinder in order to become a Supporting Holder is automatically deemed to have joined in the Direction Letter to the PREPA Bond Trustee.

8. Support for the PREPA RSA has increased substantially since its execution on May 3, 2019. On September 9, 2019, National and Syncora became Supporting Holders under the PREPA RSA. Moreover, the vast majority of non-insured Bondholders who were not initially parties to the PREPA RSA have become Supporting Holders by delivering the required joinders. Upon information and belief, Bondholders (or insurers) of almost 90% of the principal amount of Bonds have now joined in the PREPA RSA, and there are approximately \$858 million in principal amount of Bonds that have yet to become parties to the PREPA RSA (“**Nonparty Bondholders**”).

9. The PREPA Bond Trustee understands that the 9019 Motion has been clarified to seek an order that will expressly preserve all of the rights of the PREPA Bond Trustee and Nonparty Bondholders to object to any plan of debt adjustment that may be filed in the Title III Case pursuant to the PREPA RSA.

10. The PREPA Bond Trustee has not to date received any requests under the Trust Agreement from Nonparty Bondholders to object to the 9019 Motion or to the PREPA RSA.

11. After consideration of available alternatives and its duties under the Trust Agreement, and subject to inclusion of the Trustee Exculpation in the order granting the 9019 Motion, the PREPA Bond Trustee has decided not to interpose an objection to the 9019 Motion, provided, however, that it reserves all potential objections with respect to: (1) the treatment of its

individual rights under the Trust Agreement and applicable law, including the right to payment of fees, expenses, and indemnities from pledged revenues to the extent provided in the Trust Agreement; and (2) any changes to the PREPA RSA or the 9019 Motion that adversely affect the existing rights of Nonparty Bondholders under the current terms of the PREPA RSA and the 9019 Motion.

12. Nothing herein is intended to waive any rights, claims or remedies of the Trustee under the Trust Agreement, related documents, or applicable law, including without limitation, any claims asserted by the PREPA Bond Trustee in its proofs of claim.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, on this 30th of October, 2019.

We hereby certify that on this same date we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system of the U.S. Bankruptcy Court for the District of Puerto Rico for Case No. 17-BK-4780, which will send notification of such filing to all counsel of record participating in the CM/ECF system.

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